while employed upon an intrastate train which was transporting water to a tank supplying interstate and intrastate trains. *Held*, that the federal Employers' Liability Act does not apply. *Missouri, Kansas, & Texas Ry. Co.* v. *Fesmire*, 150 S. W. 201 (Tex., Ct. Civ. App.).

A railroad employee was injured while repairing a bridge upon which a track to carry interstate commerce was to be laid. *Held*, that the federal Employers' Liability Act does not apply. *Pedersen* v. *Delaware, Lackawanna, & Western R. Co.*, 197 Fed. 537 (C. C. A., Third Circ.).

A railroad employee was injured while unloading rails to be used in replacing old rails upon a roadbed over which interstate trains passed. Apparently he was to take part in the repairing. *Held*, that the federal Employers' Liability Act does not apply. *Pierson* v. *New York, Susquehanna & Western R. Co.*, 85 Atl. 233 (N. J., Ct. Err. and App.). See NOTES, p. 354.

INTERSTATE COMMERCE — CONTROL BY STATES — TAXATION: GOODS IN TRANSIT. — Flour while in interstate transit was stopped *en route* in an intermediate state, and there repacked and blended. The flour was usually on the wharf for from ten to twenty days, and a "fair working margin" was always kept on hand. *Held*, that it is taxable by the state. *In re Holt & Co.*, 35 N. J. L. J. 307 (State Board of Equalization of Taxes). See NOTES, p. 358.

JUDGMENTS — COLLATERAL ATTACK — MERGER OF FOREIGN JUDGMENT. — The plaintiff, after obtaining a judgment in Washington based on a Massachusetts judgment, brought suit in California on the Massachusetts judgment. *Held*, that the action is maintainable. *Lilly-Brackett Co.* v. *Sonnemann*, 126 Pac. 483 (Cal.).

The defendant in the principal case contended that the Massachusetts judgment had been merged in the Washington judgment. A lien is usually created by statute on the lands of a judgment debtor within the jurisdiction. *Mitchell* v. *Wood*, 47 Miss. 231. See *Hutcheson* v. *Grubbs*, 80 Va. 251, 254. It is argued, therefore, that unless successive judgments merge, a judgment creditor can unjustly subject the judgment debtor's property to a multiplicity of record liens. See *Gould* v. *Hayden*, 63 Ind. 443, 448; 1 FREEMAN, JUDGMENTS, 4 ed., § 216. Accordingly some courts hold that where the second judgment is recovered in the same jurisdiction and gives a lien upon the same property as the first, the former judgment is merged. *Denegre* v. *Haun*, 13 Ia. 240; *Purdy* v. *Doyle*, 1 Paige (N. Y.) 557. *Contra*, *Andrews* v. *Smith*, 9 Wend. (N. Y.) 53; *Preston* v. *Perton*, Cro. Eliz. 817. Of the few cases, however, where the second judgment has been obtained in a different jurisdiction, the majority support the principal case. *Weeks* v. *Pearson*, 5 N. H. 324; *Wells* v. *Schuster-Hax National Bank*, 23 Colo. 534, 48 Pac. 809. *Contra*, *Gould* v. *Hayden*, 63 Ind. 443. The courts argue that judgments are equal securities, and that where securities are equal there is no merger. But the meaning of this arbitrary distinction is not clear. It would seem that the technical doctrine of merger should not be applied where it will work injustice. To fully realize on his judgment, a judgment creditor may need to proceed against the judgment debtor's property in more than one jurisdiction, and it would be unjust to hold that in order to acquire a lien upon lands of the judgment debtor in a second state he must lose his judgment lien in the first jurisdiction.

LARCENY — LARCENY BY TRICK — DISTINCTION BETWEEN LARCENY BY TRICK AND FALSE PRETENSES. — The defendant was indicted for grand larceny upon two counts. The first alleged that the defendant *animo furandi*, by means of false representations, obtained a sale of goods to his principal and a delivery to himself as agent. The second charged the commission of common-

law larceny. *Held*, that, since the facts alleged constitute common-law larceny by trick and not an obtaining by false pretenses, the first count is bad and the second is good. *People* v. *Feinman*, 137 N. Y. Supp. 933 (Ct. Gen. Sess., N. Y. County).

In New York the crime of larceny has been extended by statute to cover the old statutory crime of obtaining by false pretenses. N. Y. CONSOL. LAWS, 1909, § 1290, p. 3963. But it is unfortunately held that an allegation of common-law larceny is not supported by proof of an obtaining by false pretenses, and *vice versa*. It is thus still essential to decide whether certain facts constitute larceny by trick or an obtaining by false pretenses. *People* v. *Dumar*, 106 N. Y. 502, 13 N. E. 325; *People* v. *Gottschalk*, 66 Hun (N. Y.) 64, 20 N. Y. Supp. 777. The court in the principal cases chooses larceny by trick, on the ground that at common law where actual title passes to the defendant there is an obtaining by false pretenses, and where possession or any interest less than ownership passes we have larceny by trick. But at common law it was not essential, in order to prevent the crime from being larceny by trick, that title should actually pass, nor even that the owner should intend it to pass to the person who obtained the property. *Queen* v. *Adams*, 1 Den. C. C. 38; *Rex* v. *Adams*, R. & R. 225. *Cf. Zink* v. *People*, 77 N. Y. 114. The necessary element was that the owner should intend to deal with the title. *Regina* v. *Thompson*, 9 Cox C. C. 222. It would seem, therefore, that, if this arbitrary distinction is to be preserved, the court should have upheld the count alleging an obtaining by false pretenses.

LICENSES — REVOCATION AFTER LICENSEE HAS ACTED ON PAROL LICENSE AND INCURRED EXPENSE. — The defendant contracted orally to give the plaintiff rights in common in a well and windmill to be erected on the defendant's land at their mutual expense. After the work was completed the defendant refused to allow the plaintiff to draw water. *Held*, that the license implied is revocable, but that an injunction will issue against obstructing the plaintiff if he is not paid within a reasonable time the value of the work done by him. *Johnson* v. *Bartron*, 137 N. W. 1092 (N. D.).

By the weight of authority equity will enforce performance of a parol contract to give an easement in behalf of a party who has performed his part to his detriment. *Gilmore* v. *Armstrong*, 48 Neb. 92, 66 N. W. 998; *McManus* v. *Cooke*, 35 Ch. D. 681. See 49 L. R. A. 497, 513. But this exception to the Statute of Frauds is, by many courts, not extended to the enforcement of parol licenses. *Cronkhite* v. *Cronkhite*, 94 N. Y. 323; *Simpson* v. *Wright*, 21 Ill. App. 67. See *Lawrence* v. *Springer*, 49 N. J. Eq. 289, 24 Atl. 933, 934; 9 HARV. L. REV. 455. The court in the principal case, following this view, admits a legal right to revoke but restrains its exercise if the plaintiff is not indemnified. This jurisdiction of equity must be based on the vague doctrine that equity will restrain the unconscionable exercise of a legal right. An example is the equity of redemption in mortgages. *Emanuel College* v. *Evans*, 1 Rep. Ch. 18. See 1 POMEROY, EQUITY JURISPRUDENCE, 3 ed., § 162; 13 HARV. L. REV. 676. So also equity will compel a creditor to deliver a security to a surety who has paid the debt, instead of to the debtor. *St. Peter's Catholic Church* v. *Vannote*, 66 N. J. Eq. 78, 56 Atl. 1037. It will often enjoin the enforcement of penalties in contracts. *Giles* v. *Austin*, 62 N. Y. 486. See 1 POMEROY, EQUITY JURISPRUDENCE, 3 ed., § 433. It will restrain the unconscionable exercise of the legal rights incident to incorporation. *Beal* v. *Chase*, 31 Mich. 490. See *Moore & Handley Hardware Co.* v. *Towers Hardware Co.*, 87 Ala. 206, 211, 6 So. 41, 43. The principal case may be a novel extension of this doctrine, but when the expense has been incurred by the plaintiff for a benefit to the land as desired by the defendant, such a decree would seem to be a logical, just, and practical solution of a difficult problem.